IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 113 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SANTRAM MANDIR TRUST

Versus

L.H. OF DECD. DAYAKUNVERBEN ALIAS DAYABEN CHHOTALA MEHTA

Appearance:

1. Appeal from Order No. 113 of 2001

MR PM THAKKAR for MR PJ KANABAR for Petitioner No. 1-2

..... for Respondent No. 1,1/2-2

MRS NISHA M PARIKH for Respondent No. 1/1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 26/09/2001

ORAL JUDGEMENT

1. Learned Counsel Shri P.M.Thakkar for the appellant submitted that the learned Judge committed an error in passing the impugned order dated 5.5.2000 below

Application Ex.5 in Trust Suit No.14 of 1996 whereby the ex-parte ad.interim order passed below Ex.5 on 13.12.1996 was made absolute. Shri P.M.Thakkar submitted that Trust Suit No.14 of 1996 filed by the respondent - plaintiff itself was not maintainable in view of the provisions of Section 213(1) of the Indian Succession Act and Sections 50 and 80 of the Bombay Public Trust Act. He submitted that the learned Judge has wholly misconstrued the Judgment of this Court cited before him while allowing the Application Ex.5.

2. In the instant case the respondent plaintiff filed Trust Suit No.14 of 1996 on the basis of the Will stated to have been executed way back in 1940 whereas the Trust has come into force in 1954. The Suit was filed in 1996 along with ApplicationEx.5. Ex-parte ad.interim order was passed by the then learned trial Judge in favour of the respondent - plaintiff on 13.12.1996. Somehow or the other the ex-parte ad.interim order remained in force for almost 4 years and ultimately by the impugned order dated 5.5.2000 it was made absolute. The appellants have challenged the impugned order before this Court by way of this Appeal which was filed way back in June, 2000. However, due to some or other reason it could not be placed for admission till 21.9.2001. On that date it was kept today at the request of Shri P.M.Thakkar.

3. If the learned Judge had decided Application Ex.5 immediately after hearing the other side and the matter had come up before this Court after filing of the Suit then perhaps this Court would have gone into and considered the aforesaid contentions raised by Shri Thakkar. However, the ex-parte ad.interim relief granted way back in 1996 has remained in force till today for almost 5 years. Under the circumstances I am of the considered opinion that this is a fit case where the trial Court should be directed to decide the preliminary issue regarding maintainability of the Suit as early as possible.

4. Accordingly, without going into the legality and validity of the impugned order passed by the learned trial Judge, the trial Court is directed to decide the preliminary issue regarding maintainability of the Trust Suit as early as possible and not later than 31st JANUARY, 2002. The parties shall fully cooperate and they will not ask for any adjournment on this Issue. The learned trial Judge shall decide the question as to whether the Suit filed by the plaintiff is maintainable or not as preliminary Issue without being influenced by

the reasons assigned by the then learned trial Judge in the impugned order. With this observation and direction this Appeal from Order is disposed of.

Direct service permitted.

Date : September 26, 2001 (B.J.Shethna, J.)

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